

Appl. No. 09/733,530
Amdt. dated June 1, 2004
Reply to Office Action of March 30, 2004

REMARKS

In the Office Action dated March 30, 2004, claims 1-29 were rejected under 35 U.S.C. § 102(e) in view of U.S. Patent No. 6,571,259 (Zheng).

RULE 131 DECLARATION

The Examiner considered Applicant's Declaration Under 35 CFR 1.131 (hereinafter "Rule 131 Declaration") as being "ineffective in overcoming" Zheng as a prior art reference. Applicant respectfully submits that Office Action has committed legal error in objecting to the Rule 131 Declaration. The first point of error in the Office Action is the assertion of inadequacy of the invention disclosure record attached as Exhibit A to the Rule 131 Declaration. The Office Action objected to the invention disclosure record because it was unsigned and undated, with signature and date blocks not filled in by the inventors or other witnesses. Applicant respectfully submits that nowhere in the Patent Office rules or MPEP is there any requirement that an invention disclosure record has to be signed by inventors. The Rule 131 Declaration, signed by the inventors, expressly stated that the document attached as Exhibit A is a copy of the invention disclosure submitted by the inventors to NCR Corporation, the assignee of the present application. This sworn statement is sufficient to authenticate the invention disclosure record.

Furthermore, the MPEP itself allows dates of an exhibit to be removed or blocked off. See MPEP § 715.07 (8th ed., Rev. 1) at 700-231. "[I]f the applicant or patent owner does not desire to disclose his or her actual dates, he or she may allege that the acts referred to occurred prior to a specified date." *Id.* The inventors in the Rule 131 Declaration have alleged that conception occurred before September 26, 2000, which is the § 102(e) date of Zheng. Thus, sufficient evidence has been provided to establish a conception date occurring before September 26, 2000.

The Office Action also committed error in objecting to the Rule 131 Declaration on the basis that no evidence regarding diligence was provided between the alleged date of conception (March 26, 2000) and the first contact with Applicant's representative (Dan

Appl. No. 09/733,530
Amdt. dated June 1, 2004
Reply to Office Action of March 30, 2004

C. Hu) on August 23, 2000. Evidence of diligence between March 26, 2000 and August 23, 2000, is not required in the present case to overcome Zheng. "Under 37 CFR § 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application)." MPEP § 715.07(a) at 700-233. Therefore, the critical period in the present case is the time just prior to September 26, 2000 (the filing date of Zheng) and the filing of the patent application. The Examiner has not challenged the evidence regarding diligence between August 23, 2000 and the filing date of December 8, 2000. Therefore, it is respectfully submitted that the Rule 131 Declaration is adequate in overcoming Zheng as a prior art reference.

Because Zheng has been removed as a prior art references, withdrawal of the rejection of claims 1-29 over Zheng is respectfully requested.

REJECTION UNDER 35 U.S.C. § 102

Moreover, as noted in our prior Reply, Zheng does not disclose the subject matter of claim 1, which recites a database system having:

- a *persistent* data storage device storing a first file management context and having a pool of storage elements (with the first file management context indicating allocated permanent files in the pool of storage elements); and
- a *non-persistent* memory storing a second file management context (with the second file management context to indicate allocated temporary files and permanent files in the pool of storage elements).

Figure 3 of Zheng shows a block index (labeled 39 in Figure 1 of Zheng). The Office Action indicated that the first 3 columns of the block index shown in Figure 3 of Zheng constitute the first file management context recited in claim 1, and all of the columns of the block index of Figure 3 of Zheng constitute the second file management context. The block index 39 is part of an in-memory file system index 37. Zheng, 6:32-33, 45-50. Because everything shown in Figure 3 is stored in memory, the structure of Figure 3 fails to satisfy the recitation in claim 1 that a persistent data storage device stores

Appl. No. 09/733,530
Amdt. dated June 1, 2004
Reply to Office Action of March 30, 2004

the first file management context, and a non-persistent memory stores a second file management context.

In response to Applicant's arguments, the present Office Action noted that Figure 3 of Zheng illustrates a "relational table" and that the "relation table itself is a permanent fixture of the system." 3/20/2004 Office Action at 6. The Office Action further stated that "[w]hile the bits within the table can be changed as needed, the table itself is never destroyed or erased." *Id.* Consequently, the Office Action considered the relational table making up the block index to be the "persistent storage" of claim 1. Applicant respectfully disagrees with this assessment of the in-memory block index 39 of Zheng. Clearly, as shown in Figure 1 of Zheng, a distinction is made between data stored in memory and data stored on a disk 22. In-memory data, such as the block index 39 depicted in Figure 3, is intended to be lost when power to the system is shut off. Therefore, the statement in the Office Action that the "table itself is never destroyed or erased" does not accurately describe the block index 39, which is stored in memory and thus will be erased when system power is removed. The memory for storing the block index 39 therefore cannot be the "persistent data storage device" recited in claim 1.

Moreover, a table such as the block index table cannot be considered a storage device. A table is stored in a storage device. In the context of Zheng, the table making up the block index 39 is stored in memory, which is a volatile or non-persistent storage device. Therefore, the elements of claim 1 cannot be met by Zheng.

Similarly, with respect to independent claim 16, Zheng fails to disclose storing a first file management context in a *persistent* storage device, and storing a second file management context in a *non-persistent* memory. Also, Zheng fails to disclose updating both the first and second file management contexts to allocate a permanent file, and updating the second file management context *without the first file management context* to allocate a temporary file.

With respect to newly added independent claim 27, Zheng does not disclose an article comprising at least one storage medium containing instructions that when executed cause a system to store a first file management context in non-persistent memory to indicate allocation of temporary and permanent files, and store a second file management context in persistent storage to indicate allocation of permanent files.

Appl. No. 09/733,530
Amdt. dated June 1, 2004
Reply to Office Action of March 30, 2004

In view of the foregoing, all claims are in condition for allowance, which action is respectfully requested. The Commissioner is authorized to charge any additional fees, including extension of time fees, and/or credit any overpayment to Deposit Account No. 50-1673 (9362).

Respectfully submitted,



Date: June 1, 2004

Dan C. Hu, Reg. No. 40,025
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Suite 100
Houston, TX 77024
713/468-8880 [Ph]
713/468-8883 [Fax]